PROCEEDING OF ADVANCE RULING AUTHORITY UNDER SECTION 56 OF MVAT ACT, 2002 AND UNDER RULE 63 OF MVAT RULES, 2005.

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<tr>
<th>SR.NO.</th>
<th>PARTICULARS</th>
<th>DETAILS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Name of applicant</td>
<td>M/s. Shokeen Pan Shop.</td>
</tr>
<tr>
<td>2</td>
<td>Address</td>
<td>Shop No 3. Survey No 884/7, Mittal Arcade, Nal Stop, Karve Road, Pune 411 004</td>
</tr>
<tr>
<td>3</td>
<td>TIN</td>
<td>27420875045V/C</td>
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<td>5</td>
<td>Jurisdictional</td>
<td>State Tax Officer, PUN-VAT-C-123, Pune</td>
</tr>
<tr>
<td>Assessing Authority</td>
<td></td>
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<tr>
<td>6</td>
<td>Heard</td>
<td>Mr S.P. Surte (Advocate) and Mr. Yedgaonkar STP.</td>
</tr>
<tr>
<td>7</td>
<td>E-mail</td>
<td><a href="mailto:Moresharad470@gmail.com">Moresharad470@gmail.com</a></td>
</tr>
<tr>
<td>8</td>
<td>Advance Ruling</td>
<td>Shri.C.M.Kamble (Chairman),</td>
</tr>
<tr>
<td>Authority</td>
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<td></td>
<td></td>
<td>Shri.V.V.Kulkarni (Member),</td>
</tr>
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<td></td>
<td></td>
<td>Shri.A.A.Chahure (Member).</td>
</tr>
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ORDER NO.ARA MUMBAI 106 of 2016-17/ Disp.Reg.No 40 / DT. 02/05/2019

(Order under section 55(5) and 55(9) of MVAT ACT, 2002)

1. Factual Matrix:

The Applicant, M/s. Shokeen Pan Shop, (for brevity refereed as SPS), a registered dealer under MVAT Act 2002 has submitted application under Section 56 of the Maharashtra Value Added Tax Act, 2002 for determination of the various questions and issues. Subsequently, the application has been transferred to Advance ruling authority to decide under Section 55 of the Maharashtra Value Added Tax Act, 2002. The applicant has stated that he carries on his proprietary business as reseller in betel leaves (commonly known as "Pan" in Marathi language), pan Masala, betel nut (Plain as also scented one), Clove, cardamom, scented
chutney, coconut powder (Copra), Fennel seed, Gulkand etc. and cigarettes either loose or in a packed form too under trade name M/s Shokeen Pan Shop at the address Shop No 3, Survey No 884/7, Mittal Arcade, Nal Stop, Karve Road, Pune 411 004. The applicant is registered under the respective provisions of the Maharashtra Value Added Tax Act 2002 and holds a valid certificate of registration under TIN 27420875045V/C with effect from 1st December 2011 as “Reseller”. The applicant has filed all the periodical returns and also deposited tax as per returns into the government treasury by due date and is not in arrears under MVAT Act 2002 and CST Act, 1956.

The applicant runs a shop under firm name and style as M/s Shokeen Pan shop where commodities such as leaves of various types, various brands of aromatic pan masala, betel nut (plain and also scented one, clove, cardamom, scented chutney, coconut powder, Copra, Gunjana leaves, edible lime paste, catechu paste, different types of edible aromatic essences, chutneys and Copra (Dried powder form of coconut) are kept for resale. Besides this, menthol or cooling, licorice powder, Fennel seed, Gulkand, Tuti Fruity, Chocolate cream, Cherry, Saffron and tooth pick for holding cherry are kept for resale.

By an application for DDQ dated 14-08-2014, the applicant had raised the following questions for determination:

1) Whether on the facts and in the circumstances of the case and on true and correct interpretation of provisions of law, the activity of putting together various ingredients on a betel leaf/ves at the instance of the customer; amounts to a manufacture within the meaning of the term “manufacture” as appearing under sub-section (15) of section 2 of the MVAT Act 2002?

2) What is the rate of tax applicable to the goods so sold under the provisions of the MVAT Act?

2. Contentions made on behalf of the applicant:

It is claimed that the applicant merely carries out the activity of resale of betel leaves along with various ingredients which are added on the same and by rolling the said leaves in conical shape in an ordered specie of betel leaf/leaves as desired by the customer, called “Pan” for chewing purposes which activity, it is contended, does not amount to manufacture as there is no change in either the character or nature or form of the goods sold. The applicant has relied on the following case laws while supporting his contention.

1) Pio- Food packers 46 STC63( SC)

2) State of Gujarat Vs Sukhram Jagannath ( Guj) 50 STC76( GUJ)

3) Cool Deserts and Neeraj V/s CCE ( Delhi Tribunal) 182 ELT 202 dt 27-10-2004

It has been contended that mere preparation activity is not enough to consider an activity as manufacture; as in the case of the applicant, it does not go to change the nature or character of the goods viz addition or topping such as fennel seed, betel nut, catchu, lime etc. on a betel leaf for that matter. There is not even an “alteration” in the nature or character of goods.
Nothing here is either roasted, fried or processed so as to change the basic character or nature of goods.

Assuming but not admitting that a new commercial commodity may have emerged or come into existence; the intention of the applicant in the present facts of the cases was to effect mere resale the goods to the customers as per their requirements.

In the opinion of the applicant he merely effects resale of betel leaves or other additives and only after ingesting the same in one bite and chewing the additives along with betel leaves by the customer; process of manufacture of “pan-masala” or as the case may be a “mouth freshener” or whatever name called may come into existence and not before that.

While selling the said goods to the customers, the applicant merely folds the said goods or the additives in an individual betel leaf/leaves to cover the risk involved, if it were to spill while handing over the same. There is no any mechanical force either applied while preparing the said commodities nor any skill involved in doing the same.

The applicant has also relied on a Rajasthan High Court judgment in the case of M/s Chohan Pan Bhandar V/s the Asstt Sales Tax Officer Beawar dated 7th August 1964, wherein the Rajasthan High Court had to deal with interpretation of the term betel leaves (Paan) to which “Chuna” (edible lime) & Katha (edible catechu) are applied (processed paan). It was decided that the betel leaves to which “Chuna & Katha are applied (Processed Paan) do not fall outside the scope of the term betel leaves (Paan) simplicitor. Hence, it is submitted that they (Paan) are as much exempt from sales tax as the betel leaves to which “Chuna & Katha” are not applied.

The applicant has therefore prayed that the application be decided so as to determine that the applicant is “reseller” as there is no sale of manufactured goods to customer since no new commodity is coming into existence with different character, form or nature.

It is also prayed that in case the application is decided otherwise, considering the merits of the case liability of the applicant be protected by invoking the provisions of section 56(2) of the MVAT Act 2002.

3. Analysis & Discussion

A reference to the definition of the term manufacture and resale is a must before deciding the questions raised by the applicant.

The definition reads as under.

Section 2(15) of the MVAT Act defines the term “manufacture” as under;

“manufacture”, with all its grammatical variations and cognate expressions includes producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods;

ARA MUMBAI /SHOKEEN PAN SHOP /106 OF 2016.17
While the definition of “resale” under Section 2(22) of the MVAT Act reads as under;

“resale” means a sale of purchased goods-

(i) in the same form in which they were purchased, or

(ii) without doing anything to them which amounts to, or results in, a manufacture, and the word “resell” shall be construed accordingly;

What can be discerned from the definitions is that, for in order to be an activity to be considered as resale, there has to be resale of goods, the goods purchased should be one and the same as the goods sold. If the goods which are sold are different, from the goods which are purchased, there cannot be resale of the goods at all.

On going through the facts of this case, we are clearly of the view that the paan purchased by the applicant and the one which is sold by him are not one and the same. After purchasing the paan i.e beetel leaf, the applicant is processing, treating and adapting the paan by adding various ingredients to make the same more palatable. After purchasing raw beetel leaves the different processes are carried out, such as; the stalk and tip of the leaves is cut off and leaves are kept in water to make them soft and palatable. Then, as per the requirement/ choice of the customers, various ingredients are applied. In some cases, the processed pan is covered in aluminum foil and kept in fridge as ready to sell across the counter. Thus the paan purchased by the applicant no more remains the paan after addition of various ingredients. The same at the stage of sale are not in the same form in which they were purchased as paan simplicitor. To put it in other words, the paan purchased by the applicant is preprocessed and the paan sold by the applicant is processed one and hence these are two different commercial products. It cannot be disputed that these products are different in character and use. The paan sold by the applicant by addition of various ingredients cannot be again used for preparing a fresh paan as per requirements of the final consumers, the way paan originally purchased by the applicant. Further, the beetel leaves can be procured from vegetable market while the processed pan (veeda or tambul in Marathi) can be procured from pan shop (thela in Marathi). The beetel leaves are used for various purposes like at the time of religious prayers or for preparing veeda or tambul for eating. If the beetel leaves are processed as above for preparing the veeda or tambul, the same cannot be used for other purposes again. Also the beetel leaves and veeda or tambul are identified as distinctly different commodities by the users.

The applicant has also referred to the Judgment of the Hon’ble Supreme Court in the case of Dy. Commr. of Sales Tax (Law) v. PIO Food Packers, 1980 (6) (ELT) 343SC wherein the Supreme Court upheld that Pineapple’s Slices prepared from the original pineapple continues to possess its original identity, notwithstanding the removal of inedible portion, the slicing and thereafter canning it or adding sugar to preserve it, cannot be said to be manufacture. From the judgments itself it can be seen that the applicant before us is adding
many ingredients to the Paan and not taking out something from the Paan and therefore, in our opinion, the ratio of the judgment doesn’t help the applicant.

The applicant has quoted the case of Hon’ble Gujrat High Court, the State of Gujrat v. Sukhra Jagganath on 15th January 1982. (1982 50STC 76 GUJ) wherein the Hon’ble Gujrat High Court had to decide the following questions –

(1) Whether on the facts and the circumstances on this case, the Tribunal was right in law in holding of mixture of Sopari, Variyali, Dhanadal, Sweet flower powder etc. as effected by the opponent and sold under the popular name of the relevant Pan Masala did not amount to manufacture within the meaning of that expression as defined in section 2(16) of the Gujarat Sales Tax Act, 1967 and accordingly, in allowing the opponent to deduct the sales thereon as resale on goods purchased for registered dealers in terms of clause (ii) of section 7 of the said Act. The Hon’ble Gujrat High Court came to the conclusion that “it cannot be said that there is a transformation of difference constituent elements in the same shop anew or a different articles emerging therefrom. The collective name given to the goods does not make them a distinct commercial commodity. Instead of taking different constituent elements separately, if they are eaten together to have the ingredients more palatable, it cannot be urged that a transformation of article has taken place and the end product having different commercial character, use, or name has come into being.”

It is to be noted from the above that, the case under reference deals with the commodity commonly known as “Paan Masala”. Herein, the instant case, the applicant is merely using different elements which are put into the Paan and thereafter Paan is sold as Paan.

We are of the firm opinion that the applicant has sold a commodity name Paan with various ingredients incorporated therein, which are totally different from the original commodity namely Paan in raw form in which the same are added.

The applicant has also quoted judgment in the case of Customs and Excise and Gold Tribunal, Delhi, 2005 (182) ELT202TRIDEL, in the case of Cool Desert Shri Niraj v. Ce decided on 27th October 2004. In this case, the said dealer was preparing various ice cream preparations such as Sundaeas, Shakes, Blasts and Cakes out of the ice cream purchased by them after adding ingredients such as nuts, waters, Sarbats, Wheat Cream, Toppings, Sugar Syrup and that it was contended by revenue that such admixture bring into existence a distinct commodity. The Tribunal held that the process undertaken by M/s. Cool Desert of adding of ice cream with different topping, nuts, sous, cream fruit milk and sugar syrup/ water and syrup / cake topping doesn’t bring into existence a commercial commodity different in name, character or use. The Tribunal concluded that the ice cream remains ice cream and it is served in different form by adding different ingredients. The end product remains the same.

The above case deals with the issue of the definition of manufacture as given under Central Excise Laws. The MVAT Act, 2002 has a separate definition given for the manufacture as well as resale. We are of the opinion that the applicant has not sold Paan simplicitor but by addition of various ingredients a different commercial commodity has come
into existence. The end product cannot again be sold as the Paan which the applicant has purchased before adding various ingredients at the instance of the customer. The applicant has also quoted the judgment of the Hon'ble Rajasthan High Court in the case of M/s. Chohan Paan Bhanadar v. the Assistant Sales Tax officer Beawar decided on 7th August 1964. In the instance case, by a notification No. F5(51) ET/58 dt. 1st April 1958, issued by the Government of Rajasthan the sale of Betel leaves was exempted from Sales Tax on the condition that the dealer claiming exemption of good should hold valid certificate of exemption for which the fixed annual fees of Rs. 10/- was prescribed. The applicant in this case was applying Chuna, Katha and Supari to the Betal Leaf one after the other and therefore the Asst. Sales Tax Officer came to the conclusion that the assessee was a processor and his sales was eatable or ready Paan whereof sales of processed Paan and attract sales tax. Hon'ble Rajasthan High Court came to the conclusion that the Betel leaves to which Chuna and Katha are applied do not fall outside the scope of the term "Betel Leaves" used in the notification dt. 1st April 1958 and came to the conclusion that they are exempt from sales tax as the betel leaves to which chuna and katha are not applied.

It is to be noted that in this case the Hon'ble Rajasthan High Court was dealing with an exemption notification which was issued by the Government of Rajasthan. The notification has been issued to give exemption to certain class of Manufacturers. It means that the Rajasthan Government has treated the activity as manufacturing and given exemption to sale of processed pan. In the case of the applicant M/s. Shokeyen Paan Shop no such notification and its interpretations are involved therein. So the judgment is not applicable to the present case.

4. Conclusion:

To reiterate, we finally conclude that the Paan which is finally sold by the applicant after addition of various ingredients thereto cannot be called resale as the same isn’t sold as it is and therefore there is manufacture involved in the process carried out by the applicant.

5. Whether on the basis of circumstances of case, the prospective effect is to be given?

Mr. S. P. Surte, Advocate has requested that if it is determined that the applicant is liable to pay tax, then the prospective effect shall be given to protect liability till the date of determination order. The protection may be given by making the ruling prospective from the date of pronouncement. Further, he requested to grant benefit provided in section 55(9) of MVAT Act, 2002

In view of above, it is necessary to analyse the provisions related to relevant Act. For clarity the provisions are reproduced as under.
Section 55 (9): -

The Commissioner or, as the case may be, the Advance Ruling Authority, may direct that the Advance Ruling shall not affect the liability of the applicant or, if the circumstances so warrant of any other person similarly situated, as respects any sale or purchase effected prior to the Advance Ruling.

On carefully analysis of the section, it reveals that the Advance Ruling Authority may protect the liability of dealer in two conditions.

a. in case of applicant or

b. if the circumstances so warrant of any other person similarly situated.

It is settled principle that the issue of prospective effect is to be considered on fact and circumstances of each case separately. There is no straight jacket formula to say that prospective effect is to be given in typical circumstances. However, the Hon. Bombay High Court in case of Lalbaugcha Raja Sarwajanik Ganeshotsav Mandal has laid certain principle for granting the prospective effect. We would like to refer the same.

The Hon. Bombay high Court in case of Lalbaugcha Raja Sarwajanik Ganeshotsav Mandal (MVAT Tax Appeal No.10 of 2015) while interpreting the section 56 of MVAT ACT,2002 laid dawn the principles regarding the granting of prospective effect and observed in relevant Para that---

"10. On plain reading of both the subsections (1) and (2) of Section 56, it is apparent that the Commissioner may direct that the determination shall not affect the liability under the MVAT Act of the applicant or if the circumstances so warrant, of any other person a similarly situated, as respects any sale or purchase effected prior to a determination. Therefore, this is not a mandate but a discretionary power vested in the Commissioner. This discretionary power has to be exercised and while exercising it, the Commissioner, has to be guided by certain inbuilt checks and safeguards. He cannot in the garb of giving relief of the nature contemplated by subsection (2) totally wipe out the liability of any and every dealer.

11. The Commissioner is expected to exercise this discretionary power so as not to defeat the law or render its provisions meaningless or redundant. The power must be exercised bearing in mind the facts and circumstances in each case. No general rule can be laid down. The exercise of this discretionary power must be bonafide and reasonable so also subserving the larger public interest. The highest officer in the hierarchy is chosen by the legislature as there is a presumption that this executive functionary will exercise the discretion in genuine and bonafide cases. He must be satisfied that there is a real need and
the circumstances warrant exercise of the same. The power being wide, the satisfaction must be backed by cogent and strong reasons which can be tested in a Court of law.

12. The words are of wide amplitude and if the Commissioner exercises the discretion injudiciously or arbitrarily and contrary to the object and purpose sought to be achieved by the enactment itself, his exercise of the discretionary power is always capable of being questioned. Therefore, when the Commissioner finds that there was never a disputed question to be determined and the law is very clear and free of doubt, equally its applicability, then, refusal by the Commissioner to exercise the discretion is rightly Upheld by the Tribunal. Just as the Commissioner was obliged to assign reasons for not exercising his discretionary power equally the Tribunal was in upholding his order. The Tribunal in paragraph 22 of its order found that the entire process was utilized so as to delay compliance with the mandate of the Act. The Tribunal has also found that the Commissioner refused to grant relief holding that there is no ambiguity in the provisions and there is no scope, for any doubt arising out of the provisions and relevant for the purpose of the determination. The reasons that are assigned by the Commissioner for refusing to give prospective effect to his determination order, have not been found to be suffering from any error of law apparent on the face of the record or perversity warranting interference in the appellate jurisdiction of the Tribunal."

The observations of the Hon. High Court as aforementioned are equally applicable to the Advance Ruling Authority and the powers delegated to the Advance Ruling Authority must be used in very logical and judicious manner in order to protect the liability of applicant and also sub-serve the larger public interest. These powers are coupled with duty to see whether the applicant has really strong reasons, which necessitate the use of discretionary powers. These powers cannot be used as per wish and whims of authority concerned.

In the present case, the applicant cannot prove existence of circumstances which warrant us to use the discretionary power. In fact, use of such discretionary powers in the absence of compelling circumstances would be detrimental to legitimate government revenue and would wipe out the legitimate tax liability. In these circumstances, we do not allow the use of prospective effect as a tool to protect or to wipe of legitimate tax liability. Hence, we feel that here is no strong and sufficient reason to hold that this advance ruling shall not affect the liability of the applicant or, if the circumstances so warrant of any other person similarly situated, as respects any sale effected prior to the Advance Ruling. Hence, the dealer's request of granting prospective effect to this order is hereby rejected.

6. In view of the discussion held herein above, the issues are decided and are answered in tabular format as under. Hence, the order-
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<tr>
<th>Sr. No.</th>
<th>Questions/ particulars</th>
<th>Thus, held that</th>
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<tbody>
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<td>01</td>
<td>Whether on the facts and in the circumstances in the case and on true and correct interpretation of provisions of law the activity of putting together various ingredients on the betel leaf/leaves at the instance of the customer by the applicant amount to manufacture within the meaning of term manufacture as appearing under subsection 15 of section 2 of the MVAT Act.</td>
<td>Yes.</td>
</tr>
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<td>02</td>
<td>What is the rate of tax applicable to the goods so sold under the provisions of the MVAT Act?</td>
<td>The rate of tax shall be as per the residual entry of the MVAT Act, 2002 schedule E of MVAT ACT.</td>
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Note: If the applicant is aggrieved by this order then Appeal may be filed before the MSTT, Mumbai within the prescribed time (Thirty days) as provided in the relevant Section of the Act.

NO: ARA. (Mumbai), /106 OF 2016-17/ 2019-20/B-No. 03 Dated 02/05/2019

Copy to:

1. The Applicant, M/s. Shokeen Pan Shop, Shop No 3. Survey No 884/7, Mittal Arcade, Nal Stop, Karve Road, Pune 411 004.
2. The Commissioner of State GST, M.S. Mumbai.
3. The Joint commissioner of State Tax-2, Pune Division, Pune.